



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 14 2010

Chuck Head, Senior Director
Land Resources
Department of Environment & Conservation
401 Church Street
1st Floor, L&C Annex
Nashville, Tennessee 37243-1501

Dear Mr. Head:

Thank you for your contribution to the elimination of childhood lead poisoning through the implementation the Lead-based Paint Program in Tennessee. We look forward to continuing to work with you on new programs and initiatives designed to protect children in Tennessee from lead poisoning. We understand that at this time, your immediate focus is on responding to the widespread devastation resulting from recent floods in western and central Tennessee. We are committed to working with you to provide information and assistance related to all of the environmental programs administered by the Environmental Protection Agency (EPA), including the lead-based paint program.

During a May 5, 2010, conference call between the EPA, Tennessee Department of Environment and Conservation, the National Home Builders Association and the Home Builders Association of Tennessee, you requested EPA's assistance in determining the regulatory impact of the Renovation Repair and Painting Rule (RRP) on the response actions in Tennessee. Pursuant to that request, we have developed the enclosed document. This document outlines EPA's position on the applicability and implementation of the RRP rule, including its emergency provisions. Based on current information, we believe these emergency provisions can be applied in the 42 counties identified in the disaster declaration issued by President Obama on May 4, 2010. This paper also sets forth how other provisions of the RRP rule generally apply in these flood areas.

If you have other questions or a need any clarification on this document or other aspects of the lead-based paint rules, please call Jeananne Gettle of my staff at (404) 562-8979.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Lapierre", is written over a horizontal line.

Kenneth R. Lapierre, Acting Director
Air, Pesticides and Toxics
Management Division

Enclosure

Application of Renovation, Repair and Painting Rule
Following May 2010 Floods in Tennessee
5/13/2010

Introduction:

On May 1 & 2, 2010, an epic rainfall event occurred in Tennessee. Rainfall in the area more than doubled the previous record for a two consecutive day rainfall event. In Nashville, 13.57 inches of rain was recorded with the previous record being 6.68 inches. A state of emergency was declared in Tennessee on Saturday, May 1, 2010, at 12:30 p.m. with the activation of the State's Emergency Operations Center and the Tennessee Emergency Management Plan. This state of emergency will be in effect for at least 60 days.

On May 4, 2010, the President issued a declaration of a major disaster for the State of Tennessee under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the Stafford Act). Under this declaration, 42 counties in Tennessee have been designated by the Federal Emergency Management Agency for Individual Assistance. These counties are: Chester, Clay, DeKalb, Hardin, Jackson, Lauderdale, Lawrence, Lewis, Macon, Stewart, Trousdale, Wayne, Benton, Carroll, Crockett, Cheatham, Davidson, Decatur, Dickson, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Hickman, Houston, Humphreys, Madison, Maury, McNairy, Montgomery, Obion, Perry, Robertson, Rutherford, Shelby, Smith, Sumner, Tipton, Williamson and Wilson.

The disaster declaration was made in part due to severe storms which resulted in substantial flooding. As a result, thousands of homes and other structures in Tennessee had standing water in them resulting in the need for substantial renovation and repair. The Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC) estimate that as many as 1,275,381 houses or structures may be impacted. Of these houses, 692,712 were constructed prior to 1978 and may contain lead-based paint.¹

On May 6, 2010, TDEC² contacted the EPA and requested assistance in determining the regulatory impact of the Renovation Repair and Painting Rule (RRP) on the response to flooding. Specifically, TDEC expressed concern that there may not be enough RRP trained renovators and certified firms in the affected areas to timely respond to renovation and repair needs.

When common renovation activities like sanding, cutting, and demolition occur in structures that contain lead-based paint, these activities create lead-based paint hazards, including lead-contaminated dust. Lead-based paint hazards are harmful to adults and children. To protect against this risk, on April 22, 2008, EPA issued the Renovation, Repair and Painting Rule (RRP) [see 73 Fed. Reg. 21692 (April 22, 2008)] which requires the use of lead-safe practices minimize exposure to lead-based paint hazards. Under the rule, beginning on April 22, 2010, contractors performing renovation, repair and painting projects that disturb paint surfaces in homes and

¹ Housing estimates are based on currently available census data.

² In addition to TDEC, assistance was also requested by the National Association of Home Builders and the Home Builders Association of Tennessee.

Application of Renovation, Repair and Painting Rule
Following May 2010 Floods in Tennessee
5/13/2010

child-occupied facilities, *e.g.*, child care facilities and schools, built before 1978, must be certified and follow lead-safe work practices.³

A preliminary response by EPA to this request indicated that there are emergency exemptions under the RRP. However, since this is the first instance, nationally, to utilize those provisions, EPA committed to provide further guidance related to the provisions and to take other necessary steps to ensure that the citizens of Tennessee can act expeditiously to preserve their homes and other critical structures in the flood-impacted areas.

Outlined below is the relevant provision of the RRP rule and guidance on how it may apply during the immediate response to address flooded homes.

Emergency Provision:

The RRP rule contains a provision that addresses the applicability of the rule in emergency situations. Specifically, 40 CFR § 745.82(b) provides:

The information distribution requirements in §745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in §§745.85, 745.89, and 745.90 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of §745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with §745.90(b)(2), the cleaning

³ “Child-occupied facilities” means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Application of Renovation, Repair and Painting Rule
Following May 2010 Floods in Tennessee
5/13/2010

verification requirements of §745.85(b), which must be performed by certified renovators, and the record keeping requirements of §745.86(b)(6) and (b)(7).

Published Guidance on RRP Application:

EPA has published extensive guidance on the application of the RRP in a series of questions and answers. The totality of this guidance can be found at: www.epa.gov/lead.

Question: Does the RRP rule apply to contractors working on pre-1978 homes and child-occupied facilities damaged by a hurricane or other natural disaster?

Answer: Damage from a major storm or other natural disaster could result in the need for emergency renovations. Certain requirements of the RRP rule do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. For example, the information distribution requirements do not apply to emergency renovations.

Emergency renovations are also exempt from the warning sign, containment, waste-handling, training, and certification requirements to the extent necessary to respond to the emergency. However, these emergency renovations are not exempt from cleaning requirements, cleaning verification requirements, or record keeping requirements.

Thus, under the emergency exemptions provisions, it is permissible for individuals to perform immediate activities necessary to protect personal property and public health. These actions may include the removal of surfaces that contain lead-based paint. Further, these actions need not be performed by certified or trained individuals to the extent necessary to alleviate the concerns associated with the emergency.

Additional Guidance With Respect to the Emergency Exemption:

- EPA believes that the scope and magnitude of the flooding present a situation where the emergency exemption is likely to apply. Specifically, when structures are significantly impacted by flood waters there is a need to quickly remove wet construction and home debris from the structure. This ensures that the main structure can adequately dry, which will avoid warping of structural components and other public health impacts such as the growth of mold. EPA believes that indicators of significant impacts from flood waters include housing constructed before 1978 (with some exceptions for zero-bedroom dwellings and housing for the elderly) and child-occupied facilities significantly impacted by the floods. In this case, significantly impacted means flooding to the extent that there is evidence of water flooding the entire structure or an appreciable amount of water damage visible on walls.

Application of Renovation, Repair and Painting Rule
Following May 2010 Floods in Tennessee
5/13/2010

- Although the emergency exemption may apply to other types of “weather” or water damage, this guidance only addresses buildings that have been significantly impacted by the wide-spread regional flooding described above (i.e., does not apply to structures that may have experienced water damage due to broken windows, broken pipes, or other similar circumstances that does not present an immediate safety or public health hazard, or threaten equipment and/or property with significant damage).

Immediate removal of construction materials

- To meet the exemption requirements, action must be taken as soon as practicable after the water recedes in a structure. Based on currently available information regarding the magnitude of the flooded area and the number of homes impacted and considering what past experience has shown us regarding the time it takes to undertake immediate response actions when faced with this type of wide-spread impact, EPA anticipates that this time-period will extend from May 2, 2010, through June 30, 2010.
- For housing significantly impacted by the floods, renovation activities (activities that disturb painted surfaces) during this timeframe would generally be exempt from the information distribution requirements as well as, to the extent necessary, the training and certification requirements of the rule.

Whole-house Gut and Rehabilitation

- The RRP rule does not apply to the construction of new buildings. As such, EPA has explained that, as a general matter, EPA does not believe that the RRP rule applies to a whole house gut rehabilitation project that demolishes and rebuilds a structure to a point where it is effectively new construction. Thus, in pre-1978 homes (single family, single level homes) where the whole house is gutted and rebuilt the provisions of the RRP rule would not apply. (April 22, 2008, 73 Fed Reg. 21730)

Projects with Partial Renovation and/or Removal of Surfaces and Materials

- Except as set forth above, the RRP rule will generally apply to all other renovation and rehabilitation projects. This includes projects that may involve the partial removal of painted surfaces, such as a portion of a wall and/or projects that involve multi-level structures with renovation on only one level.
- In these cases, renovations in the affected areas may generally be conducted by any individual utilizing the exemptions provided by the RRP rule. Since this type of renovation will result in numerous surfaces remaining in the structure, where lead dust and residue can accumulate, then the provisions for cleaning must be followed and performed by a certified firm using a trained renovator.

Application of Renovation, Repair and Painting Rule
Following May 2010 Floods in Tennessee
5/13/2010

Increasing the Number of Certified Firm, Training Providers, and Trained Renovators:

EPA has determined that, as of May 3, 2010, there have been 119 training courses offered in Tennessee. There are 2,700 Trained Renovators in Tennessee. These are renovators that have been appropriately trained in lead safe work practices under the RRP and could immediately do renovation, repair and painting on any pre-1978 structure subject to the RRP rule. In addition, given the historic rainfall and flooding event that occurred, EPA has expedited approval of firm certification applications from companies in Tennessee. As of May 11, 2010, there are 284 certified firms in Tennessee. Given the scope of the flood impact and the potential for an increased need for certified renovators, EPA is working with training providers to have additional training available in the affected regions of Tennessee and Kentucky. This should increase the number of trained lead-based paint workers sufficient to address the concerns associated with the floods.